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IN THE

Supreme Court of the United States

GOOD NEWS EMPLOYEE ASSOCIATION, REGINA REDERFORD, ROBIN CHRISTY,
Petitioners,

v.

JOYCE M. HICKS, in her individual and official capacities as Deputy Executive Director of the Community & Economic Development Agency of the City of Oakland, ROBERT C. BOBB, in his individual and official capacities as City Manager of the City of Oakland,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* UNITED STATES JUSTICE FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The City of Oakland has enacted a restrictive antidiscrimination/nonharassment policy that bars future use of potentially harassing speech in the workplace. Specifically, the City has banned the Good News Employee Association from posting flyers that use the words "natural family, marriage, and family values" because the City contends that the Good News Employee Association's viewpoint on same-sex marriage conflicts with the City's antidiscrimination policy.

1. Does the City of Oakland's opening of a limited public forum, which allows city employees to post political, religious, and social views on an employee bulletin board and interoffice email system, require a strict scrutiny standard of review where viewpoint discrimination has been enforced against only select employees?

2. When does a municipal employer have a "legitimate administrative interest" in censoring the terms "natural family," "marriage," and "family values" on an open employee bulletin board and interoffice email system where employee views about social events, hate, religion, homosexuality, terrorism, politics, and war are allowed?

3. Can a public official's qualified immunity be abrogated when he/she rejects a faith-based organization's equal access to an employee bulletin board because the terms "natural family," "marriage," and "family values" are considered disruptive to the efficient operation of a municipal workplace?

4. Is it a prior restraint for a municipal employer to declare, as a matter of policy, the terms "natural family," "marriage," and/or "family values" to be hate-speech 'per se'?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
INTERESTS OF THE *AMICUS CURIAE*	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. The Court should grant review because the City of Oakland has enacted an antidiscrimination/nonharassment policy that is a prior restraint of speech not permitted under the First Amendment of the United States Constitution.	3
II. The Court should grant review because the City of Oakland's prohibition against any use of the words "natural family," "marriage," and "family values" violates the right of members of the Good News Employee Association to free speech and equal protection of the laws.	8
CONCLUSION	15

TABLE OF AUTHORITIES

CASES Page

Aguilar v. Avis Rent a Car System, Inc., 21 Cal. 4th 121 (1999) 4, 7

Alexander v. U.S., 509 U.S. 544, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993)..... 3

Avis Rent a Car System, Inc. v. Aguilar, 529 U.S. 1138, 120 S.Ct. 2029, 146 L.Ed.2d 971 (2000). 4, 7

Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 83 S.Ct. 631, 9 L.Ed.2d 441 (1963)..... 4

Chaplinsky v. New Hampshire (1942) 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)..... 5

Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971)..... 8, 9

Cornelius v. NAACP Legal Defense and Educational Fund, 473 U.S. 788, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985)..... 10, 13

Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993)..... 7, 14

Lamb's Chapel v. Center Moriches Union Free School Dist. (1993) 508 U.S. 384, 113 S.Ct. 2141, 124 L.Ed.2d 352 (1993).....9, 10, 11

Lister v. Defense Logistics Agency, 482 F.Supp. 2d 1003 (2007)..... 12

Madsen v. Women's Health Center, Inc., 512 U.S. 753, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994)..... 7

Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 27 L.Ed.2d 419 (1973)..... 5

Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931)..... 4, 5

New York Times Co. v. United States, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971)..... 4

Perry Education Assn. v. Perry Local Educator' Assn., 460 U.S. 34, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983).....9, 10, 13

TABLE OF AUTHORITIES—Continued

Page

Pittsburgh Press Co. v. Human Rel. Comm'n, 413 U.S. 376, 93 S.Ct. 2553, 37 L.Ed.2d 669 (1973) 5

Planned Parenthood Shasta-Diablo, Inc. v. Williams, 10 Cal.4th 1009 (1995) 13

Police Department of the City of Chicago v. Mosley, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) 9, 13

R.A.V. v. St. Paul, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) 5, 6, 12

Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) 11, 12

Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) 7

Texas v. Johnson, 491 U.S. 397, 109 S.Ct. 2533, 105. L.Ed.2d 342 (1989) 12

U.S. v. National Treasury Employees Union, 513 U.S. 454, 115 S.Ct. 1003, 130 L.Ed.2d 964 (1995) 14

Widmar v. Vincent, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981) 9

Young v. American Mini Theatres, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976) 6

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution ..... *passim*

The Fourteenth Amendment to the United States Constitution ..... *passim*

TABLE OF AUTHORITIES—Continued

NON-FEDERAL STATUTES Page

California Government Code § 12940 (Fair Employment and Housing Act) 7

MISCELLANEOUS

M. Nimmer, Nimmer on Freedom of Speech § 4.03, at 4-16 (1984) 3, 4

STATEMENT OF INTEREST OF *AMICUS* [1]

Amicus seek to insure that state and local government agencies alike – in their zealous attempts to "protect" against workplace discrimination – do not enact employment policies designed to compel acceptance of the homosexual lifestyle through content-based viewpoint discrimination against speech on such a notable issue of public concern. State and local government agencies have erroneously equated this lifestyle choice to a special, protected, status, unmatched by any other protected class under any American law. Municipalities such as the City of Oakland have thus wielded their power as law and policymakers to force private groups to endorse and condone *beliefs and behavior* in the name of advancing "civil rights."

Constitutional free speech guarantees are in undeniable tension, if not conflict, with the statutory rights of employees to be free from discriminatory verbal harassment that creates a hostile work environment. Although this tension has gen-

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[1] Pursuant to Rule 37, subdivision (6), this brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amicus curiae*, has made a monetary contribution to the preparation or submission of this brief. It should be noted however, that *amicus* was previously counsel for petitioner when the civil complaint was initially filed in the United States District Court, Northern Division California. Richard D. Ackerman, who handled the case while employed for USJF, took the case with him when he left USJF to go into private practice in 2003; however, Gary G. Kreep – Executive Director of USJF – remained on file as co-counsel of record until February 14, 2005, when the district court issued its final ruling. Thereafter, Mr. Ackerman, as an attorney with the Pro-Family Law Center, appealed the district court's decision without the involvement of USJF. As such, *amicus* has not been counsel for a party to the action since the district court's decision on February 14, 2005. *Amicus* submits the accompanying brief pursuant to Rule 37 of the Rules of this Court as *amicus curiae* in support of Petitioner. The brief is submitted with the consent of both the Petitioner and the Respondent, whose consent letters have been lodged with the Clerk of the Court.

erated lively debate in scholarly legal journals, the United States Supreme Court has yet to address the issue. This case presents one aspect of the problem: the use of Administrative Employment Policies prohibiting certain kinds of future speech, on the basis of its content, as a remedy for hostile environment employment discrimination.

The United States Justice Foundation is a nonprofit corporation organized under the laws of the State of California and dedicated to the preservation of civil and human rights. Since its inception in 1979, USJF has regularly assisted individuals and classes, not only to seek redress for significant acts of injustice, but also to promote valuable public policy matters.

Amicus has concerns that the holding of the Ninth Circuit Court of Appeals in this case, if left unchecked, will set a precedent for other government entities to enact similar anti-discrimination policies designed to suppress unpopular and/or unfavorable expressions under the guise of creating a 'safe work environment,' which, in reality, results in a prior restraint of otherwise constitutionally protected speech and viewpoint based free speech discrimination. *Amicus* urge the Court to grant the petition.

SUMMARY OF THE ARGUMENT

This case presents the profoundly important issue of whether a government agency may, in an effort to promote a non-hostile work environment, prohibit a person from engaging in speech that is perceived to be offensive, but is nonetheless protected by the First Amendment of the United States Constitution.

Amicus curiae will offer two arguments: First, that the City of Oakland's antidiscrimination/nonharassment policy constitutes a prior restraint of expression that is clearly protected by the First Amendment of the Constitution of the United States. Second, that the City's prohibition against any

use of the words "natural family," "marriage," and "family values" violates the right of members of the Good News Employee Association to free speech and equal protection of the laws guaranteed by the United States Constitution.

No decision by the United States Supreme Court has, as yet, declared that the First Amendment permits restrictions on speech creating a hostile work environment. Accordingly, a serious question arises whether or not the prohibition of the phrases "natural family," "marriage," and "family values" in this case constitutes an impermissible prior restraint on Ms. Rederford's and Ms. Christy's speech.[2]

Moreover, one of the bedrock principles of free speech jurisprudence is the unshakeable notion that the government may not prohibit the expression of an idea simply because society finds the idea or viewpoint offensive or disagreeable. Antidiscrimination employment policies, like the one here, that regulate speech on the basis of content and viewpoint, threaten the very freedom that this country was founded upon.

ARGUMENT

I. The Court should grant review because the City of Oakland has enacted an antidiscrimination/ nonharassment policy that is a prior restraint of speech not permitted under the First Amendment of the United States Constitution.

The term 'prior restraint' is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.[3] Temporary restraining orders, permanent injunc-

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[2] Petitioners in no way concede that the mere words "natural, family, marriage, and values" alone, nor, as used in this case, create a hostile work environment.

[3] *Alexander v. United States* (1993) 509 U.S. 544 [550, 113 S.Ct. 2766, 2771, 125 L.Ed.2d 441] [*citing* M. Nimmer, Nimmer on Freedom of

tions, administrative employment policies prohibiting the use of certain words—i.e., all governmental action that forbids speech activities—are classic examples of prior restraints.[4] Prior restraints of speech are particularly inimical because they do not merely place a burden on the speaker's ability to communicate a message; rather they erase that message before its effects can be assessed.[5]

The law generally prohibiting prior restraints on speech is well-settled. "Any system of prior restraints of expression comes to this Court bearing a heavy presumption ***against*** its constitutional validity."[6] As such, the government bears a heavy burden to justify a prior restraint.[7] The presumption is by no means rebutted here. The antidiscrimination/nonharassment policy, adopted by the City of Oakland, and the memorandum dated February 20, 2003 that interprets the policy, bars use of the words "natural family," "marriage," and "family values." The policy at issue here—enjoining any future use in the workplace of specified words—not only restrain speech, but does so unmistakably on content grounds.

Attaching liability to the utterance of words in the workplace is invalid for the simple reason that this speech is fully protected speech.[8] No one claims that the words "natural family," "marriage," and "family values" qualify as fighting

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Speech § 4.03, p. 4-14 (1984)]. See also, *Near v. Minnesota ex rel. Olson* (1931) 283 U.S. 697 [51 S.Ct. 625, 75 L.Ed. 1357].

[4] M. Nimmer, Nimmer on Freedom of Speech § 4.03, at 4-16 (1984).

[5] *Aguilar v. Avis Rent a Car System, Inc.* (1999) 21 Cal. 4th 121, 193 (dis. opn. of Kennard, J.).

[6] *Bantam Books, Inc v. Sullivan* (1963) 372 U.S. 58, 70 [83 S.Ct. 631, 9 L.Ed.2d 584].

[7] *New York Times Co. v. United States* (1971) 403 U.S. 713, 714 [91 S.Ct. 2140, 2141, 29 L.Ed.2d 822].

[8] *Avis Rent a Car System, Inc. v. Aguilar* (2000) 529 U.S. 1138, 1141 [120 S.Ct. 2029, 146 L.Ed.2d 971] (dis. opn. of Thomas, J.).

words,[9] obscenity,[10] or some other category of speech currently recognized as outside the scope of First Amendment protection.[11] Quite the contrary, the policy at issue constitutes a broad prohibition touching on core protected speech. It applies to words that, although perceived as offensive by one employee, may be used to convey, ideas or emotions and are therefore shielded by the First Amendment. Furthermore, the content-based nature of the City's restriction—which bars derogatory speech based upon race/national origin/ancestry, gender, sexual orientation, age, religion, marital status/ pregnancy, military status, medical condition, and physical and/or mental disability, but not because of political affiliation, union membership, or numerous other traits—renders it invalid under the United States Supreme Court's current jurisprudence.[12]

The speech that the City of Oakland has enjoined is expression of a particular viewpoint, on a particular subject. In spite of the laudable goal of creating a more welcome workplace climate, such a ban is a classic prior restraint of the kind that courts may not impose.[13] As the United States Supreme Court made clear in *R.A.V. v. City of St. Paul*, targeting speech on the basis of its message or viewpoint is not permissible under the First Amendment of the United States

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[9] *Chaplinsky v. New Hampshire* (1942) 315 U.S. 568, 572 [62 S.Ct. 766, 86 L.Ed. 1031].

[10] *Miller v. California* (1973) 413 U.S. 15, 24 [93 S.Ct. 2607, 27 L.Ed.2d 419].

[11] See e.g., *Pittsburgh Press Co. v. Human Rel. Comm'n* (1973) 413 U.S. 376 [93 S.Ct. 2553, 37 L.Ed.2d 669] [validating prohibition that extended only to commercial speech already determined to be legally unprotected by the First Amendment].

[12] *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 391 [112 S.Ct. 2538, 120 L.Ed.2d 305].

[13] *Near v. Minnesota* (1931) 283 U.S. 697 [51 S.Ct. 625, 75 L.Ed. 1357].

Constitution.[14] The desire to protect victims and vulnerable groups from discrimination in all forms is admirable. Yet, so worthy a goal does not permit courts or agencies to circumvent the clear precepts of the Constitution.

The City's antidiscrimination/nonharassment policy impermissibly restricts speech based on the mere assumption that these words will inevitably create a hostile and abusive work environment amounting to employment discrimination.[15] The "forbidden words" at issue here are a far cry from slurs, vulgarity and derogatory epithets; however, even the prior restraint of slurs, vulgarity, and derogatory epithets in the workplace—and *even* by a person who has previously engaged in discriminatory conduct in the workplace—is unconstitutional. This is because the offensive content and effect of using any one, or more, of a list of verboten words cannot be determined in advance. The line between permissible advocacy and impermissible incitation to crime or violence depends on the setting in which the speech occurs, the exact words spoken, and the content of the utterance.[16]

The presumption against prior restraints is heavier—and the degree of protection broader—than that against limits on expression imposed by criminal penalties. Behind the distinction is a theory deeply etched in our law: a free society prefers to punish the few who abuse rights of speech *after* they break the law than to throttle them and all others

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[14] *R.A.V. v. St. Paul* (1992) 505 U.S. 377 [112 S.Ct. 2538, 120 L.Ed. 2d 305].

[15] Even if some types of harassing speech in the workplace do not enjoy First Amendment protection, there has been no showing that a prior restraint, rather than a less severe remedy of money damages for any future violations, is necessary to prevent a hostile work environment.

[16] *Young v. American Mini Theatres* (1976) 427 U.S. 50, 66 [96 S.Ct. 2440, 49 L.Ed.2d 310].

beforehand.[17] It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of freewheeling censorship are formidable.

The instant policy is insufficiently tailored in at least three respects, raising serious doubts concerning whether "the challenged provisions of the policy burden no more speech than necessary to serve a significant government interest."[18] First, the policy prohibits even a single utterance of a prohibited word. Yet a hostile environment for purposes of the California Fair Employment and Housing Act[19] only arises "when the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[20] An employee surely has a substantial interest in a work environment that is not hostile or abusive but this interest is invaded in an intolerable manner only when harassing speech actually produces a hostile or abusive environment.[21] It cannot be known in advance whether a particular utterance will create (or recreate) a hostile environment under this standard, and speculation simply does not suffice to rebut the heavy presumption against a prior restraint.[22] Second, there has been no showing that the

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[17] *Southeastern Promotions, Ltd. v. Conrad* (1975) 420 U.S. 546, 558-559 [95 S.Ct. 1239, 43 L.Ed.2d 448].

[18] *Madsen v. Women's Health Center, Inc.* (1994) 512 U.S. 753, 765 [114 S.Ct. 2516, 129 L.Ed.2d 593].

[19] Cal. Govt. Code § 12940.

[20] *Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 21 [114 S.Ct. 367, 126 L.Ed.2d 295].

[21] *Aguilar v. Avis Rent a Car System, Inc.* (1999) 21 Cal 4th 121, 184 (dis. opn. of Kennard, J.).

[22] *Avis Rent a Car System, Inc. v. Aguilar* (2000) 529 U.S. 1138, 1143 [120 S.Ct. 2029, 146 L.Ed. 2d 971] (dis. opn. of Thomas, J.).

prospect of a money damages judgment for future violations would fall short of deterring petitioners from creating a hostile environment. Third, the prohibition applies without regard to whether the utterance is directed at Judith Jennings, the sole complaining co-worker in this case, and contains no exception for speech that might contribute to reasoned debate.

It is significant that we deal here with a claim at the core of the First Amendment – that the State is suppressing speech that it dislikes. We as a nation so value the free exchange of ideas that we are willing to tolerate, even offensive ideas, knowing that "one man's vulgarity is another's lyric."[23] By embracing the City of Oakland's all-encompassing ban against the use of any word that may imply any amount of hostility towards a limited selection of individuals in the workplace, the Ninth Circuit gutted the bedrock principles underlying the prior restraint doctrine and effectively, yet erroneously, created a "work-place speech exception" to the First Amendment. For the same reason that the Court evaluates prior restraints under a heavy presumption ***against*** their validity, the Court should decide the issue now.

II. The Court should grant review because the City of Oakland's prohibition against any use of the words "natural family," "marriage," and "family values" violates the right of members of the Good News Employee Association to free speech and equal protection of the laws.

The Community and Economic Development Agency of the City of Oakland prohibits certain flyers and posters from being displayed on workplace "bulletin boards" open to all employees based on the content and viewpoint of the message expressed on the flyer or poster. The City's policy violates the First Amendment right to Freedom of Speech and the

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[23] *Cohen v. California* (1971) 403 U.S. 15, 25 [91 S.Ct. 1780, 1788, 29 L.Ed.2d 284].

Fourteenth Amendment guarantee of Equal Protection under the laws because there is no appropriate governmental interest suitably furthered by the City's differential treatment.

There is no question that the City of Oakland may legally preserve the property under its control for the use to which it is dedicated.[24] The extent to which the Government may restrict access depends on the nature of the relevant forum. But the government is powerless to restrict expression whether because of its message, its ideas, its subject matter, or it's content.[25] Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, the government may not grant access to a given forum to people whose views it finds acceptable, while denying it to whose views it finds "unacceptable."[26]

The principal purpose of a traditional public forum is the free exchange of ideas; therefore, speakers may be excluded from a public forum only when necessary to serve a compelling state interest which is narrowly drawn to achieve the desired goal.[27] Similarly, when the Government has intentionally designated a place or means of communication as a public forum, speakers may not be excluded without a compelling governmental interest.[28] Access to a nonpublic forum, however, can be restricted as long as the restrictions

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[24] *Lamb's Chapel v. Center Moriches Union Free School Dist.* (1993) 508 U.S. 384, 390 [113 S.Ct. 2141, 124 L.Ed.2d 352].

[25] *Cohen v. California* (1971) 403 U.S. 15, 24 [91 S.Ct. 1780, 1787, 29 L.Ed.2d 284].

[26] *Police Department of the City of Chicago v. Mosley* (1972) 408 U.S. 92 [92 S.Ct. 2286, 33 L.Ed.2d 212].

[27] *Perry Education Assn. v. Perry Local Educator' Assn.* (1983) 460 U.S. 37, 45 [103 S.Ct. 948, 954, 74 L.Ed.2d 794].

[28] *Id.* at 45. See also, *Widmar v. Vincent* (1981) 454 U.S. 263 [102 S.Ct. 269, 70 L.Ed.2d 440].

are "reasonable and are not an effort to suppress expression merely because public officials oppose the speaker's view."[29]

The City of Oakland opened up a forum – i.e., the workplace bulletin boards – for employees to speak their views on political issues, post comics, share ideas, and advertise their various associational activities.[30] When Ms. Rederford and Ms. Christy, members of the Good News Employee Association, asked for the same opportunity to openly communicate with others about their Christian activities and views on family, the City of Oakland denied them equal access to the designated public forum. The City violated the First Amendment and Fourteenth Amendment when it denied access to the members of the Good News Employee Association solely to suppress the point of view they supported on an otherwise includible subject – namely the politically charged debate about same-sex marriage."[31]

In *Lamb's Chapel v. Center Moriches Union Free School District*, the Supreme Court concluded that a regulation which excludes all religions, while advancing or permitting advocacy of non-religious associations violates the First Amendment.[32] The court held that a public school district violated the First Amendment by opening school facilities for after-school meetings of associations, other than religious organi-

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[29] *Id.* at 46. See also, *Cornelius v. NAACP Legal Defense and Educational Fund* (1985) 473 U.S. 788, 800 [105 S.Ct. 3439, 87 L.Ed.2d 567].

[30] Even if the Court views the bulletin board as essentially a non-public forum, the government may only restrict access, if such efforts are reasonable and not an effort to suppress expression. The City of Oakland fails to meet even the rational basis standard and, thus, its viewpoint based exclusion of petitioners' religious beliefs and political opinions from the employee bulletin board is unconstitutional.

[31] *Lamb's Chapel v. Center Moriches Union Free School District* (1993) 508 U.S. 384 [113 S.Ct. 2141, 124 L.Ed.2d 352].

[32] *Ibid.*

zations.[33] The court noted that although a speaker may be excluded from a non-public forum if he wishes to address a topic not encompassed within the purpose of the forum, the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he holds on an otherwise includible subject.[34]

The same principles were expressed in *Rosenberger v. Rector and Visitors of University of Virginia.*[35] In *Rosenberger*, the University of Virginia, a state school, authorized payments for the printing of student publications. A student association that "primarily promotes or manifests a particular belief in or about a deity or an ultimate reality" was excluded from such funding.[36] The Supreme Court held that the exclusion of all religious organizations from the benefits given to the other student associations was unconstitutional.[37] The court noted that it is as objectionable to exclude both a theistic and an atheistic perspective on the public debate about racism, as it is to exclude one, the other, or yet another political, economic, or social viewpoint on a given subject.[38]

Both *Lamb's Chapel* and *Rosenberger* involve the same principles as the matter at hand. Similar to here, the government was not required to make facilities or funding available to any group. Once such benefits were voluntarily afforded by the governmental agency, however, an outright exclusion of religious groups or messages was unconstitutional. Likewise, having provided the forum of a bulletin board for its

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[33] *Ibid.*

[34] *Id.* at 393-394

[35] *Rosenberger v. Rector and Visitors of University of Virginia* (1995) 515 U.S. 819 [115 S.Ct. 2510, 132 L.Ed.2d 700].

[36] *Ibid.*

employees, it is unconstitutional for the City of Oakland to exclude the religious or socially conservative viewpoint on the topic of same-sex marriage.[39]

A court order, a legislative act, and an administrative policy that regulate speech on the basis of its topic are called content-based regulations and are presumptively invalid.[40] A governmental prohibition that regulates speech on the basis of the particular views or biases that the speaker expresses about a topic is termed a viewpoint regulation and is likewise presumptively invalid, as 'an egregious form of content discrimination.'[41]

The antidiscrimination/nonharassment policy at issue here is both a content-based regulation and an infringement on one speaker's viewpoint. It is based on content because it prohibits the use of particular words for their communicative impact – their potential to offend the person who hears it.[42] It is based on viewpoint because it prohibits the utterance of "natural family, marriage, and family values," words that the City claims convey and embody a particular bias against same-sex marriage.[43]

The proper test to determine the validity of the content and viewpoint-based prohibition on the use of certain words at issue here is whether the ban is necessary to serve a compel-

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[39] *See Lister v. Defense Logistics Agency* (2007) 482 F.Supp. 2d 1003, 1010-1011.

[40] *Rosenberger v. Rector and Visitors of University of Virginia* (1995) 515 U.S. 819, 828 [115 S.Ct. 2510, 132 L.Ed.2d 700].

[41] *Id.* at 829.

[42] *Texas v. Johnson* (1989) 491 U.S. 397, 411-412 [109 S.Ct. 2533, 2543-2544, 105. L.Ed.2d 342].

[43] *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 391-393 [112 S.Ct. 2553, 37 L.Ed.2d 669].

ling state interest and narrowly drawn to achieve that end.[44] The City claims that the purpose of prohibiting words like "natural family," "marriage," and "family values" and denying members of the Good News Employee Association equal access to advertise their club, is to prevent workplace harassment and quell a potentially hostile work environment. As the Supreme Court held in *Cornelius v. NAACP Legal Defense and Educational Fund*, even "the existence of reasonable grounds for limiting access to a *nonpublic forum* will not save a regulation that is in reality a façade for viewpoint-based discrimination."[45] Under our system of government, the State may not prohibit the dissemination of views simply because they are controversial, distasteful, or disturbing. To sanction such a prohibition would be a complete repudiation of the philosophy of the Bill of Rights.[46] The City of Oakland may not vindicate its interest in preventing a hostile work environment by the wholesale exclusion of a religious group's viewpoint on a matter of public concern—namely same-sex marriage—or by permitting public discussion on ***all but this one*** hotly-contested political issue.[47]

In addition, the policy adopted by the City of Oakland prohibits more speech than necessary to promote the government's interest in eradicating invidious employment discrimination. To establish employment discrimination by verbal harassment, the employee must show that the workplace is permeated with discriminatory intimidation, ridicule, and

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[44] *Perry Ed. Assn. v. Perry Local Educators' Assn.* (1983) 460 U.S. 34, 45 [103 S.Ct. 948, 74 L.Ed.2d 794].

[45] *Cornelius v. NAACP Legal Defense and Educational Fund* (1985) 473 U.S. 788, 811 [105 S.Ct. 3439, 87 L.Ed.2d 567].

[46] *Planned Parenthood Shasta-Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009, 1027 (dis. opn. of Kennard, J.)

[47] *Police Department of the City of Chicago v. Mosley* (1972) 408 U.S. 92 [92 S.Ct. 2286, 33 L.Ed.2d 212].

insult, . . . that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.[48] It is impossible to demonstrate in advance that any particular workplace speech, let alone use of such words as "natural family," "marriage," and "family values," will create a hostile work environment, much less that it will produce direct, immediate, and irreparable injury. The mere speculative claim of potential for disruption of the workplace is an insufficient basis by itself for a limitation of otherwise protected speech.[49] Moreover, if the use of the bulletin board causes, in fact, the disruption feared by the City of Oakland officials, the government can simply take down the board or limit messages to those posted by the agency itself.

An administrative policy specifically prohibiting use of the words "natural family," "marriage," and "family values" and not just utterances that actually produce a hostile work environment, is not narrowly drawn to serve the State's compelling interest in eliminating employment discrimination.[50] The City of Oakland's policy is far from being narrowly tailored to a substantial governmental interest. The City's blatant exclusion of only the religious viewpoint on same-sex marriage from the workplace bulletin boards is based on the content of message and the opinion of the

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[48] *Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 21 [114 S.Ct. 367, 370, 126 L.Ed.2d 295].

[49] *U.S. v. National Treasury Employees Union* (1995) 513 U.S. 454, 476 [115 S.Ct. 1003, 130 L.Ed.2d 964].

[50] The City of Oakland's policy goes even one step further. It prohibits every utterance of an insult, demeaning comment, and derogatory slur in the workplace based on only the following designations: race, color, religion, sex, pregnancy, marital status, age, national origin, physical/mental disability, medical condition, sexual orientation, and military status. Such a prohibition against any future offensive workplace speech on the basis of content and viewpoint is invariably and necessarily unconstitutional.

speaker. This example of overt viewpoint discrimination only fosters and encourages the type of hostile work environment the City seeks to abolish.

In the early part of the twentieth Century, American courts tried to prohibit and punish the dissemination of communist ideas, but the United States Supreme Court struck down these decisions with a resounding no. The Ninth Circuit has reopened the door to censorship with a resounding yes. The government is now free to prohibit the expression of ideas it dislikes and courts can enforce these prohibitions. One of the truths we hold to be self-evident is that a government that tells its citizens what they may say will soon be dictating what they may think. Once again, the citizenry call upon the highest court in this land to restore their inalienable right to speak freely without punishment for or suppression of their personal convictions.

CONCLUSION

There is a growing threat to the very existence of freedom of speech in the workplace, all in the name of eliminating unlawful "discrimination." Lawmakers and courts, at the state and federal level, like the City of Oakland in the case at hand, are wrongly usurping to themselves the role of defining what words and phrases alone create a de facto "hostile work environment" for the purpose of stating a claim of unlawful harassment under the Fair Employment and Housing Act. Reaching far beyond the traditional "workplace violence" laws that target discrimination based on conduct, regulations such as the Oakland policy at issue here actually enjoin the use of specific words or phrases based on the speaker's political and/or religious viewpoint. Such policies unreasonably restrict the free speech rights of government employees in violation of the First Amendment.

Based on all of the foregoing, the Court is urged to grant the petition for a writ of certiorari to address and resolve these issues.

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